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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2875 OF 2004

Shivnath Rai Harnarain (I) Ltd. ... Petitioners

Vs.

Krishna Sahakari Sakhar
Karkhana Limited & Anr. ... Respondents

Mr. Uday Warunjikar for the petitioners.

Mr. R.V. Govilkar for respondent 1.

CORAM: ABHAY S. OKA, J.

DATED: 8TH DECEMBER, 2004.

P.C.:-

1. Heard Mr. Warunjikar, the learned counsel appearing for the petitioners and Mr. Govilkar, the learned counsel appearing for respondent 1.

2. The petitioners (original defendants) made an application (Ex-40) praying for setting aside the order passed by the trial court directing that the suit should proceed without written statement. By the order impugned, the said application has been rejected by holding that the provisions of Rule 1, Order VIII of the Code of Civil Procedure, 1908 (as amended w.e.f. 1/7/2002) are mandatory.

3. The Division Bench of this court in Writ Petition No.2847 of 2004 has already held that the said provision

is not mandatory and is directory. It was held that for extra-ordinary and special reasons, the trial court is empowered to exercise its discretion and extend time for filing written statement beyond the time stipulated by Rule 1 of Order VIII of the said Code.

4. Mr. Warunjikar, the learned counsel for the petitioners submitted that the petitioner-company is having its office at Delhi and, therefore, it was not possible for the petitioners to file their written statement within time as the suit is filed by respondent 1 at Karad. Mr. Govilkar for respondent 1 submitted that there is hardly any ground made out in the application (Ex-40).

5. It is true that the suit of respondent 1 has been filed after amendment to the said Code came into force on 1/7/2002. However, for sufficiently long time there were conflicting views taken by different High Courts regarding the power of the trial court to extend the time fixed for filing written statement. It cannot be disputed that the petitioners have assigned reasons for not filing written statement in time. Mr. Warunjikar submitted that the written statement is ready and, in fact, it was filed along with the application (Ex-40).

6. In my view, considering the controversy involved, the petitioners deserve to be given a chance to file their written statement and defend the suit on merit.

Considering the fact that the petitioners are a limited company and considering the nature of controversy involved in the suit, the petitioners will have to pay costs of Rs.7,500/- to respondent no. 1. Hence, I pass the following order:

O R D E R

(i) The impugned order dated 11/3/2004 is quashed and set aside.

(ii) The application (Ex-40) made by the petitioners is allowed subject to condition of the petitioners paying the costs of Rs.7,500/- to respondent no.1 within a period of four weeks from today. If the amount of costs is not accepted by respondent no.1, liberty to the petitioners to deposit the said amount in the trial court.

(iii) It is made clear that if the written statement is not filed within a period of four weeks from today and if the amount of costs is not paid or deposited within four weeks from today, the impugned order will stand.

(iv) It will be open to respondent no.1 to

file an additional affidavit of evidence in the light of the written statement of the petitioners.

(v) Rule is made absolute in the above terms.

(vi) All concerned to act on ordinary copy of this order duly authenticated by the Sheristedar of this court.

(ABHAY S. OKA, J.)